

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/537,532	TAHAN, A CHRISTIAN	
	Examiner	Art Unit	
	Jack W. Keith	3663	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED _____ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1, 3, 4 and 7-16.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

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Continuation of 3. NOTE: Applicant has attempted to cancel those claims that directly recite theory and invited Examiner to strike from the application the explanation of the phenomena upon which the operation of the invention is based - note that this explanation constitutes a large portion of the specification. Additionally, Applicant has submitted new evidence requiring careful review and consideration that Applicant believes to be relevant to 112 first paragraph and 101 rejections that have been maintained. A cursory review of the amendments and accompanying materials reveals that Applicant has not overcome either enablement or novelty issues. Note that all the claims, even those that do not directly recite it, still rely on the theory described by Applicant.

Applicant notes that the original starting material for the experiment was tungsten, and implies that the 4 test samples includes "before and after" elemental constitutions, but it is actually not clear from the analysis printout that the 4 sets of data represent anything more than the elemental constitutions of the tungsten samples after being experimented upon. Accordingly, it is not clear that any element was formed, as opposed to being present in the original tungsten sample in trace amounts. Certain claims made in the Remarks regarding this analysis reveal either a misunderstanding of the issues in contention or unwarranted weighting of facts that appear to support a favorable conclusion, but in fact do not. Applicant should make clear which columns represent control data and which columns represent experimental data if the 4 samples (hardly a number adequate for determining statistical certainty) are even to be considered. It is not at all clear from the results supplied by applicant that any energy whatsoever was produced.

Applicant's conclusion that the "sum total of the Khlopov paper is that if one detects a 1.6 MeV peak, new matter is generated" shows a deep misunderstanding of the reference and the relevant physics involved. The fact that the binding energy of O-helium (NOT normal helium) is 1.6 MeV does not provide theoretical underpinning for the results of Applicant's totally unrelated experiments. Khlopov clearly states that when the binding energy of 1.6 MeV is provided (i.e., by adequate temperature), helium can be converted to O-He plus a gamma ray. This has nothing to do with changing a proton into a neutron as is postulated by Applicant and required to justify claims of elemental changes in tungsten. Additionally, it has nothing to do with the production of gravity waves.

Applicant has failed entirely to address Examiner's contention that since "low frequency" is not defined in the claims Jackson et al. meets the claims. Note that it is not necessary for the device of Jackson et al. to actually be normally used with 2Hz signals, but rather that it be capable of producing such low frequencies, such is the case. The fact that Jackson et al. teaches the use of higher frequencies is an example of teaching something different, not teaching away. Moreover, Applicant has not addressed the 102 rejection under Bendall at all.